

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)

National Exchange Carrier)
Association, Inc.)

Petition to Amend Section 69.3 of)
the Commission's Rules)

CC Docket No. 99-316
RM 9486

ORDER

Adopted: October 23, 2000

Released: October 25, 2000

By the Commission:

I. INTRODUCTION

1. In this Order, we revise our rules regarding the required notice period for changes in participation in the National Exchange Carrier Association, Inc.'s (NECA's) access tariffs. Specifically, we are changing the carrier election deadline for participation in association tariffs from December 31 of the previous year to March 1 of the tariff year.

II. BACKGROUND

2. Section 69.3 of the Commission's rules governs the filing of access service tariffs.¹ Under this section, NECA is responsible for filing an access service tariff as agent for all telephone companies that participate in the association tariff. Under section 69.3, the association tariff is to be filed with a scheduled effective date of July 1. Carriers are currently required to notify NECA of any change in their association tariff participation by December 31 of the year preceding the filing of the tariff. At the time we adopted this notice requirement, NECA was required to file its tariff on April 2, 90 days prior to the effective date.

3. In 1997 the Commission streamlined its tariff filing rules, allowing carriers to file their annual access tariffs on 7 days notice for filings that solely decrease rates, or 15 days notice for filings that include rate increases.² The streamlined notice requirement applies to NECA's association access service tariff, allowing NECA to file the tariff on June 16 or June 24, rather than on April 2, for an effective date of July 1. In addition to the streamlined notice period, NECA now employs electronic data collection and processing routines that were not in use when section 69.3 was adopted. These more efficient data collection techniques significantly reduce the time required to assemble and analyze data

¹ 47 C.F.R. § 69.3.

² *Implementation of Section 402(b)(1)(A) of the Telecommunications Act of 1996*, Report and Order, 12 FCC Rcd 2170, 2219-20 (1997).

for NECA's tariff filing. According to NECA, the tariff streamlining rules and improvements in data collection management eliminate the need for carriers to provide six months advance notice to NECA of planned tariff participation changes.³

4. In a petition for rulemaking filed on February 8, 1999, NECA requested that the Commission amend section 69.3 of its rules to allow carriers to notify NECA of their tariff participation changes by March 1 of the tariff year instead of requiring notification by December 31 of the preceding year. The Commission granted NECA's petition and issued a Notice of Proposed Rulemaking.⁴ Two parties, the National Telephone Cooperative Association (NTCA) and the United States Telephone Association (USTA), filed comments in response to the NPRM.⁵ Both NTCA and USTA supported NECA's request to change the notification date from December 31 to March 1.

III. DISCUSSION

5. We hereby amend our rules to extend the deadline by which carriers must notify NECA of any change in their participation in the association's access tariffs from December 31 of the previous year to March 1 of the tariff year. We agree with NECA that changes in tariff notification periods and advancements in data collection and processing methods warrant a shorter timeframe for carriers to provide notice of tariff participation changes.⁶ In addition, as NECA noted in its petition, shorter notice periods will not disadvantage NECA and may help smaller companies make better-informed decisions regarding tariff participation.⁷ For instance, because the deadline by which NECA must file proposed revisions to its average schedule formulas is December 31, companies that rely on these formulas to compute interstate access compensation will have more time to analyze the proposed revisions before deciding whether to participate in NECA's access tariff.

6. Therefore, we are amending Part 69 of our rules to allow carriers until March 1 of each tariff year to notify NECA of any changes in tariff participation.

IV. ADMINISTRATIVE MATTERS

A. Paperwork Reduction Act

7. The action contained herein has been analyzed with respect to the Paperwork Reduction Act of 1995 and found not to impose new or modified reporting and recordkeeping requirements or burdens

³ See *National Exchange Carrier Association Inc.*, Petition for Rulemaking, RM 9486 at 2 (filed Feb. 8, 1999) (NECA Petition).

⁴ *National Exchange Carrier Association, Inc. Petition to Amend Section 69.3 of the Commission's Rules*, Order and Notice of Proposed Rulemaking, 14 FCC Rcd 18252 (1999) (NPRM).

⁵ The NPRM was published in the Federal Register on August 24, 2000, and an additional comment period was granted because of the delay in the Federal Register publication. No additional comments were filed.

⁶ NECA Petition at 2; NTCA Comments at 1-2.

⁷ NECA Petition at 2-3. See also NTCA Comments at 2.

on the public. Therefore implementation of the amended rule extending the date by which carriers must notify NECA of changes in their association access tariff participation will not be subject to approval by the Office of Management and Budget (OMB).

B. Final Regulatory Flexibility Act Analysis

8. As required by the Regulatory Flexibility Act (RFA),⁸ an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the NPRM.⁹ The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA, as amended.¹⁰

1. Need for and Objectives of this Order

9. As discussed above, NECA has asserted that changes in tariff notification periods and advancements in data collection and processing methods have facilitated NECA's ability to prepare association tariffs. Therefore, NECA can receive notifications from carriers changing the status of their association tariff participation closer to the tariff filing deadline. At NECA's request, the Commission is amending its rules to extend the deadline by which carriers must notify NECA of changes in association tariff participation. Specifically, the notification deadline is changed from December 31 of the preceding year to March 1 of the tariff year. This extension of the notification deadline will provide carriers additional time to determine their tariff participation status, thus allowing them to make more informed tariff participation decisions.

2. Summary of Significant Issues Raised by the Public Comments in Response to the IRFA

10. The Commission received no comments addressing the IRFA. However, the comments received in response to the NPRM were supportive of the change in tariff participation notification date. NTCA's comments specifically noted that changing the election deadline to March 1 would benefit NTCA's members, which are small carriers that are "rural telephone companies" as defined in the Telecommunications Act of 1996.¹¹

3. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

11. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the

⁸ See 5 U.S.C. § 603. The RFA, 5 U.S.C. § 601 *et. seq.*, has been amended by the Contract With America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

⁹ NPRM, 14 FCC Rcd at 18254-57.

¹⁰ See 5 U.S.C. § 604.

¹¹ NTCA Comments at 1-2.

number of small entities to which the rules will apply.¹² The RFA defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small business concern” under Section 3 of the Small Business Act.¹³ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).¹⁴

12. In this FRFA, we consider the potential impact of the Order on all local exchange carriers (LECs) that could consider participating in NECA's association tariffs. Neither the Commission nor the SBA has developed a definition for small LECs. The closest applicable definition under the SBA rules is for Standard Industrial Classification (SIC) category 4,813, telephone communications companies other than radiotelephone (wireless) companies.¹⁵ For this category, the SBA has defined a small business to be a small entity having no more than 1,500 employees.¹⁶

13. We have included small incumbent LECs in the present RFA analysis. As noted above, a “small business” under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and “is not dominant in its field of operation.”¹⁷ The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not “national” in scope.¹⁸ We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on the Commission's analyses and determinations in other, non-RFA contexts.

14. The most reliable source of information regarding the total numbers of certain common carrier and related providers nationwide, as well as the numbers of commercial wireless entities, appears to be data the Commission publishes annually in its *Carrier Locator: Interstate Service Providers Report (Locator)*.¹⁹ This report was compiled using information from Telecommunications Relay

¹² 5 U.S.C. § 604(a)(3).

¹³ *Id.* § 601(3).

¹⁴ Small Business Act, 15 U.S.C. § 632.

¹⁵ 13 C.F.R. § 121.201.

¹⁶ *Id.*

¹⁷ 5 U.S.C. § 601(3).

¹⁸ Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of “small business concern” which the RFA incorporates into its own definition of “small business.” See 15 U.S.C. § 632(a) (Small Business Act); 5 U.S.C. § 601(3) (RFA). SBA regulations interpret “small business concern” to include the concept of dominance on a national basis. 13 C.F.R. § 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. See, e.g., *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, First Report and Order, 11 FCC Rcd 15499, 16144-45 (1996).

¹⁹ FCC, Common Carrier Bureau, *Carrier Locator: Interstate Service Providers* (Jan. 2000).

Service (TRS) fund worksheets filed by carriers, including, *inter alia*, LECs, competitive local exchange carriers, interexchange carriers, competitive access providers, satellite service providers, wireless telephony providers, operator service providers, pay telephone operators, providers of telephone toll service, providers of telephone exchange service, and resellers.²⁰

15. There are two principle providers of local telephone service; incumbent LECs and competing local service providers. However, under section 69.3 of the Commission's rules, participation in NECA's access service tariffs is limited to incumbent LECs,²¹ therefore the proposed rule changes will not affect competing local service providers. According to the most recent *Locator* data, 1,348 filers identified themselves as incumbent LECs.²² Data set forth in the Commission's *Statistics of Communications Common Carriers (SOCC)* lists 32 incumbent LECs that have more than 1,500 employees.²³ We do not have data specifying the number of incumbent LECs that are either dominant in their field of operations or are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of incumbent LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that fewer than 1,316 incumbent LECs are small entities that may be affected by the rules.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

16. This Order adopts a proposed extension of the date by which carriers must notify NECA of changes in participation in association tariffs. Under the current rules this notification must be provided six months prior to the effective date of the tariff, by December 31 of the preceding year. The Commission amends its rules to allow carriers until March 1 of the tariff year to provide the required notification to NECA. The amended rules will not require carriers to conduct any new reporting or recordkeeping obligations. Instead, carriers will continue to report to NECA any changes in their association tariff participation, but this notification will be submitted at a later date.

5. Steps taken to Minimize Significant Economic Impact on Small Entities and Significant Alternatives Considered

17. The rule amendments adopted in this Order are designed to assist all carriers in making their association tariff participation elections. The extension of the notification date from December 31 to March 1 may particularly benefit smaller carriers that rely on average schedule formulas to compute interstate access compensation, because NECA is required to file proposed revisions to these schedules by December 31. The extension of the tariff election deadline will provide carriers more time to analyze NECA's proposed revisions before making tariff participation decisions.

²⁰ *Locator* at 1.

²¹ See 47 C.F.R. § 69.2(hh).

²² See *Locator* at Fig. 1.

²³ *Statistics of Communications Common Carriers* (1999 ed.) at Tables 2.10 and 2.11.

6. Report to Congress

18. The Commission will send a copy of the Order, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996.²⁴ In addition, the Commission will send a copy of the Order, including this FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the Order and FRFA (or summaries thereof) will also be published in the Federal Register.²⁵

V. ORDERING CLAUSES

19. **IT IS ORDERED**, pursuant to sections 1, 4(i), 4(j), 201-205, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 154(j), 201-205, and 303, that this Order **IS HEREBY ADOPTED** as described above.

20. **IT IS FURTHER ORDERED** that the provisions of this Order **SHALL BE EFFECTIVE** 30 days after publication in the Federal Register.

21. **IT IS FURTHER ORDERED** that the Commission's Consumer Information Bureau, Reference Information Center, **SHALL SEND** a copy of this Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION



Magalie Roman Salas
Secretary

²⁴ See 5 U.S.C. § 801(a)(1)(A).

²⁵ See 5 U.S.C. § 604(b).

APPENDIX A

AMENDMENTS TO THE CODE OF FEDERAL REGULATIONS

PART 69 - ACCESS CHARGES

1. The authority citation continues to read as follows:

Authority: 47 U.S.C. 154, 201, 202, 203, 205, 218, 220, 254, 403.

2. Amend § 69.3 by revising subparagraphs (e)(6), (e)(9), and (i)(1) to read as follows:

§ 69.3 Filing of access service tariffs.

* * * * *

(e) * * *

(6) A telephone company or companies that elect to file such a tariff shall notify the association not later than March 1 of the year the tariff becomes effective, if such company or companies did not file such a tariff in the preceding biennial period or cross-reference association charges in such preceding period that will be cross-referenced in the new tariff. A telephone company or companies that elect to file such a tariff not in the biennial period shall file its tariff to become effective July 1 for a period of one year. Thereafter, such telephone company or companies must file its tariff pursuant to paragraphs (f)(1) or (f)(2) of this section.

* * *

(9) A telephone company or group of affiliated telephone companies that elects to file its own Carrier Common Line tariff pursuant to paragraph (a) of this section shall notify the association not later than March 1 of the year the tariff becomes effective that it will no longer participate in the association tariff. A telephone company or group of affiliated telephone companies that elects to file its own Carrier Common Line tariff for one of its study areas shall file its own Carrier Common Line tariff(s) for all of its study areas.

* * * * *

(i) * * *

(1) In addition to the withdrawal provisions of paragraphs (e)(6) and (9) of this section, a telephone company or group of affiliated telephone companies that participates in one or more association tariffs during the current tariff year and that elects to file price cap tariffs or optional incentive regulation tariffs effective July 1 of the following tariff year shall notify the association by March 1 of the following tariff year that it is withdrawing from association tariffs, subject to the terms of this section, to participate in price cap regulation or optional incentive regulation.